

June 1, 1945.

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. Ira E. Cowart,
State Egg Inspector,
Capitol Building,
Phoenix, Arizona.

Dear Sir:

We have your letter of May 24, 1945, in which you state:

"I respectfully request an opinion relative to the State Egg Inspector's Fund, the continuity of which, after June 30, 1945, is in question; based upon certain provisions of Chapter 36, Laws of 1943.

"Is Section 9, Chapter 24, Laws of 1941, repealed or superseded either in whole or in part by any subsequent act of the legislature?"

Chapter 24, Laws of the regular session of 1941, is an act relating to eggs. The title of the act reads as follows:

"Relating to eggs; provided for the grading, sale and inspection thereof, and repealing Section 63-120 to 63-122, inclusive, of the Arizona Code of 1939."

Section 9 of said chapter provides that all moneys collected pursuant to the act shall be paid into the State Treasury and credited to the egg inspection account, and that all moneys in the inspection account are appropriated to the State Egg Inspector for the purpose of carrying out the provisions of this act for all salaries and expenses incurred thereunder, and provides that such salaries and expenditures shall be paid from the egg inspection account.

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Said section further provides:

"Balances remaining therein at the end
of the fiscal year shall not revert
to the general fund."

Chapter 86 of the Laws of 1943, regular session, provides in Section 17 of Article 4 of the chapter, from and after July 1, 1943, all continuing or recurring appropriations heretofore made for the use of departments or agencies from or consisting of any specified source of revenue, or a percentage of the receipts and collections of specified revenue are abolished and repealed, and the total amount of all receipts and collections from all sources shall be paid into the general fund of the state without any deductions whatsoever, to be applied to the purpose and objections to which they were levied and assessed, all subject to the regulation and control of Chapter 86.

It might appear at first glance the appropriation made in Section 9, Chapter 24 of the Laws of 1941, was discontinued by Chapter 86, Laws of 1943. However, the title of Chapter 86, is as follows:

"Relating to state finances, budgeting and accounting and repealing Articles 1 and 2 of Chapter 10, Arizona Code of 1939, and all other acts or parts of acts in conflict herewith, and all continuing or recurring appropriations."

In the case of Hudson Tire Company v. Brooks, State Treasurer, decided May 10, 1945, the Supreme Court considered a situation similar to the one you present to us. In that case the question was whether Chapter 86 repealed the appropriation contained in Article 3, Chapter 59 of the Code of 1939, (the appropriation made for the use of the Highway Department of certain revenues collected by the department), was repealed by said Chapter 86.

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In that case the Court held the title of Chapter 86 limited the repeals made by Chapter 86 to appropriations set forth in Articles 1 and 2 of Chapter 10 of the Arizona Code of 1939, (the old financial code), and the act could not go beyond the title and inasmuch as the title did not refer to the appropriations contained in Chapter 59 of the Arizona Code of 1939, the general provisions in Section 17 repealing continuing and recurring appropriations did not apply to the Highway Department appropriation as set up in Article 3, Chapter 59 of the Arizona Code of 1939.

The appropriation to your department is in Chapter 24, Laws of 1941, and was not contained in Chapter 10 of the Arizona Code of 1939, and inasmuch as the title of Chapter 86 made no reference to the repeal of appropriations made in said Chapter 24, we think the principle of law applied in the Hudson v. Brooks case applies to your appropriation as set up in said Chapter 24.

Therefore, it is our opinion the appropriation made by Section 9, Chapter 24, Laws of 1941, was not repealed by Chapter 86 of the Laws of 1943, and the appropriation made in Section 9 of said Chapter 24 is available to your department.

Yours truly,

JOHN L. SULLIVAN
Attorney General

EARL ANDERSON
Assistant Attorney General

EA:jn
cc to: Ann Frohmiller

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